

RECEIVED
USDC, CLERK, CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

2010 AUG -5 A 9:53

Rasheen Capers, #137327,) C. A. No. 2:10-0320-SB-RSC
Petitioner,)
-versus-) **REPORT AND RECOMMENDATION**
A. J. Padula,)
Respondent.)

The petitioner brought this action seeking relief pursuant to 28 U.S.C. § 2254. On May 12, 2010, the respondent filed a motion for summary judgment. By order of this court filed May 14, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. On May 26, 2010, the petitioner filed a motion for an extension of time and was given until July 1, 2010, to respond to the motion. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding pro se, the court filed an order on July 2, 2010, giving the petitioner an additional ten (10) days in which to file his response to the motion for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. On July 7, 2010, the petitioner filed another request for an extension and was given an extension until August 1, 2010,

to respond to the respondent's motion. The petitioner did not respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution.

Respectfully Submitted,


Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

August 4, 2010

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within **fourteen (14) days** of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).